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## Torts—Negligence in Supervision of Pupils During Recess

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gage a cab for him, and further that they knew or should have known that he was armed inasmuch as police regulations required police officers to carry a loaded revolver at all times. Under these conditions, it was alleged that they (and, by *respons. eat superior*, the City) were negligent in allowing him to remain on the public streets armed and in an intoxicated condition. Plaintiff's testimony was contradicted by Long who claimed he had engaged the cab himself.

Since the complaint was dismissed, the Court of Appeals was required to give the plaintiff-appellant the benefit of every favorable inference which could be drawn from the record<sup>20</sup> and did not consider the question of credibility.<sup>21</sup> The Court concluded that there was sufficient evidence to entitle the plaintiff to go to the jury for a determination as to liability, inasmuch as reasonable men could reach differing conclusions on the basis of the facts presented.<sup>22</sup>

### Negligence in Supervision of Pupils During Recess

Again this term the question of the sufficiency of evidence to constitute a *prima facie* case reached the Court of Appeals. The four essential elements to a negligence action in New York are (1) a duty owed by defendant to plaintiff, (2) a breach of that duty with (3) a resultant injury to the plaintiff, and (4) absence of contributory negligence.<sup>23</sup> In order to go to the jury, it is necessary that there be either a conflict in the evidence or uncontested evidence from which fair minded men might draw more than one inference.<sup>24</sup> "The sufficiency of evidence reasonable to satisfy a jury cannot be mechanically measured. It is incredible as a matter of law only where no reasonable man could accept it and base an inference upon it. That depends upon considerations which vary in accordance with the circumstances of the particular case."<sup>25</sup>

In *Decker v. Dundee Central School District*,<sup>26</sup> the lower court, after the jury returned a verdict for the plaintiff, dismissed the complaint, holding there was insufficient evidence to permit the jury to infer negligence. The Court of Appeals held that reasonable men could differ on the basis of the evidence presented and therefore reinstated the jury's verdict.<sup>27</sup>

20. *Dunham v. Village of Canisteo*, 303 N.Y. 498, 503, 104 N.E.2d 872, 875 (1952).

21. *Swensson v. New York, Albany Desp. Co.*, 309 N.Y. 497, 505, 131 N.E.2d 902, 906 (1956).

22. See *Prima Facie Case — Scintilla of Evidence*, 7 BUFFALO L. REV. 73 (1957-58); *Prima Facie Case*, 6 BUFFALO L. REV. 146 (1956-57); *Prima Facie Case*, 5 BUFFALO L. REV. 63 (1955-56).

23. *Kimbar v. Estis*, 1 N.Y.2d 399, 153 N.Y.S.2d 197 (1956).

24. *Veihelmann v. Manufacturers Safe Deposit Co.*, 303 N.Y. 526, 104 N.E.2d 888 (1952).

25. *Blum v. Fresh Grown Preserve Corp.*, 292 N.Y. 241, 54 N.E.2d 809 (1944).

26. 4 N.Y.2d 462, 176 N.Y.S.2d 307 (1958).

27. See *Prima Facie Case — Scintilla of Evidence*, 7 BUFFALO L. REV. 73 (1957).